

No. 14,821

IN THE

United States Court of Appeals
For the Ninth Circuit

KAL W. LINES,

Appellant,

VS.

FALSTAFF BREWING Co., et al.,

Appellees.

APPELLEES' PETITION FOR A REHEARING.

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and Petitioners.

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*To the Honorable William Denman, Chief Judge, and
to the Honorable Associate Judges of the United
States Court of Appeals for the Ninth Circuit:*

Come now Falstaff Brewing Corp., Goebel Brewing Company of California, Monteverde & Parodi, Inc., Ralph Montali, Inc., Pacific Gas & Electric Company, Pabst Brewing Company, Harry F. Rathjen Co., San Francisco Brewing Corporation, Melvin Sosnick Company, Twin Peaks Distributing Co., Vick's Distributing Company, N. Cervelli & Company, California Wine Association, Brown & Bigelow, Carlo Arbasetti, The Albert Peters Co., Appellees herein and hereby petition the above entitled Court for a rehearing of

the above entitled matter and for an Order setting aside the Opinion and Judgment of the above entitled Court herein made on the 15th day of May, 1956 and hereby specify each and all of the following as grounds for such rehearing:

I.

That the aforesaid Judgment of the above entitled Court is contrary to law and to legal precedent, and among other things, is contrary to the decision of the United States Circuit Court of Appeals for the Tenth Circuit in the matter of *Garrison v. Pilliod Cabinet Co., et al.*, 50 F.(2d) 1035, 18 ABR (NS) 409 which latter decision of a court of equal jurisdiction with the above entitled Court (cited Appellees' Brief p. 7) is neither cited nor distinguished in the Opinion of the above entitled Court dated the said 15th day of May, 1956.

II.

That, contrary to the observations of the above entitled Court in its said Opinion herein, Appellees at no time before the above entitled Court contended that the Referee in Bankruptcy herein had no jurisdiction to disapprove the election of a trustee. On the contrary, counsel for Appellees conceded, in open court, upon the argument of the above entitled matter, that the Referee in Bankruptcy had such a power, but that, as Appellees also pointed out in their Brief (p. 6) "this power is not to be used arbitrarily but only for good cause, in the exercise of sound judicial

discretion''. In the "CONCLUSION" to Appellees' Brief (p. 13) Appellees conceded that "At no time have appellees contended that the Referee has no jurisdiction, *in a proper case*, to sustain objections to and/or disapprove the election of a trustee by creditors whose interests are, or might be adverse to the bankrupt estate itself, but conversely, our position is that the Referee's actions in so doing 'must be governed entirely upon statutory principles'".

III.

That there was not sufficient or, in fact any evidence in the record herein to justify the application to this case by the above entitled Court of the legal and equitable principles of disqualification of these creditors from nominating and, in effect, disenfranchising Appellees from electing the trustee herein.

IV.

That it has been held (*Garrison v. Pilliod Cabinet Co.*, supra) that even the assignee for the benefit of creditors, himself, is not disqualified from soliciting claims in bankruptcy proceedings (for voting purposes). Here, in the case at bar, we do not have the assignee soliciting the claims, but merely the creditors' committee who admittedly are members of the Board of Trade of San Francisco, of which and for which Mr. Hempy acted as assignee for the benefit of the creditors of the above named bankrupt; and there was no showing before the trial court by Appellant, and hence there is not in the record before

CERTIFICATE OF COUNSEL

We hereby certify that the foregoing Petition for Rehearing is, in our opinion, well founded in fact and in law and is not interposed for delay.

Dated, San Francisco, California,
June 11, 1956.

SHAPRO & ROTHSCHILD,
By ARTHUR P. SHAPRO,
*Attorneys for Appellees
and Petitioners.*